

Message Text

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ACTION NEA-10

INFO OCT-01 EUR-12 ISO-00 SP-02 USIA-06 AID-05 EB-08
NSC-05 TRSE-00 SS-15 STR-06 OMB-01 CEA-01 CIAE-00
FRB-03 INR-07 NSAE-00 XMB-02 OPIC-03 LAB-04
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FM AMEMBASSY KUWAIT
TO SECSTATE WASHDC 9975
INFO AMEMBASSY ABU DHABI
AMEMBASSY AMMAN
AMEMBASSY ATHENS
AMEMBASSY BEIRUT POUCH
USINT BAGHDAD POUCH
AMEMBASSY CAIRO
AMEMBASSY DAMASCUS
AMCONSUL DHAHRAN
AMEMBASSY DOHA
AMEMBASSY JIDDA
AMEMBASSY MANAMA
AMEMBASSY MUSCAT
USDOC WASHDC

C O N F I D E N T I A L KUWAIT 0382

E.O. 11652: GDS
TAGS: ETRD, KU
SUBJECT: CONFLICT BETWEEN EAA AND TAX REFORM ACT PROVISIONS
REGARDING THE BOYCOTT

1. SUMMARY: CONFLICT BETWEEN ANTIBOYCOTT PROVISIONS OF
EXPORT ADMINISTRATION ACT (EEA) AND TAX REFORM ACT OF 1976
RELATING TO COMPLIANCE OF US FIRMS WITH LAWS AND REGULA-
TION IN THE COUNTRY IN WHICH THEY ARE DOING BUSINESS IS
RAISING DIFFICULTIES FOR SOME US FIRMS TO FULFILL
EXISTING CONTRACTS IN KUWAIT. THIS CONFLICT, UNLESS
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RESOLVED, WILL LIMIT LEVERAGE EMBASSY MAY BE ABLE TO
EXERT TO ENCOURAGE GOK TO ELIMINATE OBJECTIONABLE BOYCOTT
REQUIREMENTS. END SUMMARY.
AS DEPARTMENT AWARE, 1976 TAX REFORM ACT REGULATIONS
CONCERNING THE BOYCOTT (FEDERAL REGISTER VOLUME 41, NO.
212, NOVEMBER 11, 1976, PARAS H3 THRU 5) MAKE FINE DIST-
INCTION BETWEEN A) ACCEPTABILITY OF CONTRACTS STIPULATING

THAT THE "LAWS, REGULATIONS, REQUIREMENTS OR ADMINISTRATIVE PRACTICES OF A COUNTRY WILL APPLY TO THE PERFORMANCE OF THE CONTRACT IN THAT COUNTRY" AND B) THOSE INDICATING THAT US FIRM "WILL COMPLY WITH THE LAWS, REGULATIONS, REQUIREMENTS OR ADMINISTRATIVE PRACTICES OF COUNTRY X." LANGUAGE IN A) IS ACCEPTABLE UNDER EAA AND TAX REFORM ACT, BUT LATTER LANGUAGE IN B) IS NOT ACCEPTABLE UNDER LATTER. THIS APPLIES TO EXISTING CONTRACTS WHICH EXTEND PAST DEC. 31, 1977. IN OTHER WORDS, A STATEMENT INDICATING COMPLIANCE IN THE "PASSIVE VOICE" IS ACCEPTABLE, WHILE ONE IN THE "ACTIVE VOICE" IS NOT.

2. FACED WITH THIS DECEMBER 31, 1977 DEADLINE, TWO LARGE AMERICAN FIRMS ATTEMPTED TO OBTAIN GOK ACCEPTANCE OF MODIFICATION OF LANGUAGE IN EXISTING CONTRACTS TO CONFORM TO TAX REFORM ACT PROVISIONS. IN THE CASE OF SMALLER OF THE TWO, EFFORTS WERE UNSUCCESSFUL AND FIRM HAD TO RENOUNCE UNILATERALLY THE OFFENDING LANGUAGE IN ITS CONTRACT AS OF DEC. 31, 1977. (NO REACTION YET RECEIVED FROM OTHER CONTRACTING PARTY, MIN DEF, WHICH NOT NECESSARILY BOUND BY BOYCOTT REGULATIONS.) IN CASE OF LARGER FIRM, WHICH INVOLVED POSSIBLE LOSS OF 100 MILLION DOLLARS IN TAX CREDITS, PROLONGED DISCUSSIONS RESULTED IN ACCEPTANCE OF COMPROMISE LANGUAGE ACCEPTABLE UNDER TAX REFORM ACT.

3. FIRM WHICH WAS SUCCESSFUL IN OBTAINING MODIFICATION OF CONFIDENTIAL

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LANGUAGE WAS ABLE TO DO SO ONLY AFTER CONSIDERABLE DIFFICULTY AND EXPRESSIONS OF CONCERN TO GOK AT MINISTERIAL LEVEL. FIRM'S REP INDICATED THAT FACTS THAT HIS COMPANY HAD A VERY LONG AND ESTABLISHED RELATIONSHIP WITH KUWAIT AND THAT THE CONTRACT WAS OF CONSIDERABLE IMPORTANCE TO KUWAIT WERE PROBABLY SIGNIFICANT IN OBTAINING RELUCTANT KUWAITI AGREEMENT TO WHAT WAS ACTUALLY ONLY VERY MINOR CHANGE IN LANGUAGE.

4. IN OUR DISCUSSIONS WITH GOK OFFICIALS ON U.S. ANTIBOYCOTT LEGISLATION, ONE OF OUR MOST EFFECTIVE ARGUMENTS HAS BEEN THAT THE EAA DEFINITELY ACKNOWLEDGES THE SOVEREIGN RIGHTS OF FOREIGN GOVERNMENTS TO IMPLEMENT LAWS WITHIN THEIR JURISDICTION. HOWEVER, INTERPRETATIONS H3 THRU 5 OF THE TAX REFORM ACT OF 1976 AND OTHER PROVISIONS OF THAT ACT SEEM TO CHALLENGE COMPLIANCE WITH THESE SOVEREIGN RIGHTS. AS RESULT OF STATE/TREASURY BOYCOTT TEAM VISIT HERE IN OCTOBER 77, WE WERE LEFT WITH THE IMPRESSION THAT AFTER EAA REGULATIONS CAME OUT TREASURY AND STATE WOULD WORK TO RESOLVE THE CONFLICTS BETWEEN SETS OF REGULATIONS EMANATING FROM TWO LAWS.

5. WHILE INITIALLY GOK OFFICIALS SEEMED TO BE REASONABLY
RECEPTIVE TO SEMANTIC CHANGES IN REQUIRED BOYCOTT
PROVISIONS IN CONTRACTS AND L/CS, IT IS BECOMING
INCREASINGLY OBVIOUS HERE THAT WE ARE GOING TO HAVE A
STEEP UPHILL FIGHT TO DEVELOP ANY KUWAIT FLEXIBILITY TO MEET
THE REQUIREMENTS OF U.S. ANTIBOYCOTT LEGISLATION. OUR TASK
TO COUNTER BOYCOTT BECOMES DOUBLY DIFFICULT WHEN WE
ARE FORCED TO DEAL WITH CONTRADICTIONS IN THE GOVERNING
U.S. LAWS. WE RECOMMEND THAT DEPT. UNDERTAKE EFFORTS TO
RESOLVE THESE CONTRADICTIONS. WE WOULD APPRECIATE ANY
CLARIFICATION OR PERTINENT INFORMATION ON THE STATUS OF THIS
QUESTION.
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Message Attributes

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